

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

WALBERTO HERNANDEZ REYES

Plaintiff

vs.

CT RADIOLOGY COMPLEX, LLC

Defendants

CIVIL NO.

SUBJECT:

**Injunctive and Declaratory Relief,
American with Disabilities Act of 1990
[ADA]; Rehabilitation Act of 1973**

NOTICE OF REMOVAL

TO THE HONORABLE COURT:

COMES NOW, CT Radiology Complex, LLC, and through its legal representations, and pursuant to 28 U.S.C. § 1441 it hereby gives notice of removal of this action from the Puerto Rico Court of First Instance, Superior Part of Bayamón, where it is pending, to the United States District Court for the District of Puerto Rico. In support of this Notice of Removal, CT Radiology Complex, LLC, very respectfully alleges, states, and prays as follows:

1. On July 7, 2021, Walberto Hernández Reyes, (“Hernández Reyes” or “Plaintiff”) filed *Complaint* number BY2021CV02627 (“Complaint”) with the Court of First Instance of the Commonwealth of Puerto Rico, Superior Court of Bayamón, against CT Radiology Complex, LLC, requesting injunctive relief under the Americans with Disabilities Act (“ADA”), 42 U.S.C.A. § 12101, *et seq.* and the Rehabilitation Act of 1973, 29 U.S.C.A. § 794. An exact copy of Plaintiff’s *Complaint* is attached hereto as **Exhibit 1**, in compliance with 28 U.S.C. § 1446(a).

2. CT Radiology Complex, LLC was served with summons and a copy of the referenced complaint on July 14, 2021. [See **Exhibit 2**]
3. The district courts of the United States have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. §1331.
4. Pursuant to 28 U.S.C.A. § 1441(a), “[a]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants to the district court of the United States for the district and division embracing the place where such action is pending.”
5. Additionally, “[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, ... ” 28 U.S.C.A. § 1446(b)(1).
6. In compliance with the above cited legal requirements, CT Radiology Complex, LLC files this Notice of Removal.
7. The standard to determine whether removal is appropriate is well-established: “*a cause of action arises under federal law only when the plaintiff’s well-pleaded complaint raises issues of federal law.*” Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63, 107 S.Ct. 1542 (1987). Plaintiff is the master of his own claim and can avoid removal of an action by solely relying on state law in the remedies sought. Nashoba Communications Limited Partnership No. 7 v. Town of Danvers, 893 F.2d 435, 437 (1st Cir.1990) (quoting Taylor v. Anderson, 234 U.S. 74, 75, 34 S.Ct. 724 (1914)) (“*The presence of a federal question is determined from what necessarily appears in the plaintiff’s statement of his*

own claim in the bill of declaration, unaided by anything alleged in anticipation of avoidance of defenses which is thought the defendant may interpose.””).

8. The First Circuit Court of Appeals stated in PCS 2000 LP v. Romulus Telecommunications, Inc., 148 F.3d 32, 34 (1st Cir.1998) that “*the [well-pleaded complaint] rule stipulates that, with a few exceptions, ... a case arises under federal law only if a federally cognizable cause of action appears within the four corners of the complaint.*” Precedent also clearly establishes that “[a] defense is not part of the plaintiff’s properly pleaded statement of his or her claim.” Rivet v. Regions Bank of Louisiana, 522 U.S. 470, 118 S.Ct. 921, 925 (1998).
9. In the above captioned case, Plaintiff unambiguously makes an ADA claim and a Rehabilitation Act claim, and requests remedies under both federal statutes.
10. On page 5 of the Complaint, paragraph 9, Plaintiff even acknowledges that this Honorable Court has jurisdiction since the Complaint presents a federal question: “*Should this civil proceeding be removed to the United States District Court, subject matter jurisdiction is invoked under 28 U.S.C. §§ 1331 and 1343 (a)(3) and (a)(4) for violations to the ADA.*” [Unofficial translation]
11. Since Plaintiff’s complaint raises claims under the Federal Laws, specifically ADA and the Rehabilitation Act, a removal in this case is appropriate.
12. As indicated, the Complaint asserts claims under the ADA and the Rehabilitation Act of 1973. This Honorable Court has original subject matter jurisdiction over Plaintiff’s civil action and removal must be granted.

WHEREFORE, CT Radiology Complex, LLC very respectfully requests from this Honorable Court to take notice of the removal of this action, determine that the removal of the above referenced case to this Honorable Court is appropriate, and order the exclusion of any

proceedings in the Court of First Instance of the Commonwealth of Puerto Rico, Superior Part of Bayamón or in any state court in accordance with law.

RESPECTFULLY SUBMITTED.

WE HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

In Guaynabo, Puerto Rico, this 12th day of August 2021.

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s/ Ricardo Pizarro

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